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From-Akerman Senterfitt

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Application Number

10/656,717

Filing Date *Currently Accrued*

December 15, 2003

First Named Inventor

Holloway et al.

Art Unit

1754

Examiner Name

5653-481

Attorney Docket Number

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## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: HOLLOWAY et al.

RECEIVED  
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Application No.: 10/656,717

Examiner:

AUG 13 2004

Filed: September 4, 2003  
December 15, 2003  
(current date accorded)

Group Art Unit: 1754

For: METHOD OF PRODUCING NANOSIZED OXIDE POWDERS

## CERTIFICATE UNDER 37 CFR 1.8(a)

I hereby certify that this correspondence is being faxed to 703-872-9306 addressed to Mail Stop Petitions, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on August 13, 2004.

Neil R. Jetter

OFFICIAL

PETITION UNDER 37 CFR 1.181

VIA FACSIMILE 703-872-9306  
Mail Stop Stop Petitions  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

This is a Petition under 37 CFR 1.181 in connection with the above-identified patent application (the "Application"). This Petition requests that the Application be accorded a filing date of September 4, 2003, since all the requirements of 37 C.F.R. § 1.53 were met when the above-referenced application was originally filed on September 4, 2003. This Petition also includes the prescribed petition fee of \$130.00.

Applicants received a Notice of Incomplete Nonprovisional Application from the U.S. Patent Office, dated November 28, 2003 ("Notice"), wherein it was noted that the Application was filed on September 4, 2003 and did not include drawings. The Notice properly listed the filing date of the Application as September 4, 2003. In response to the Notice, even though clearly not necessary for the understanding of the subject matter sought to be patented, on December 11, 2003, Applicants filed 10 sheets of drawings with the U.S. Patent and Trademark

(WP193687;1)

Office. The drawings show structural characteristics (e.g. XRD, SEM) of the powder particles formed using the claimed invention.

Applicants then received a Filing Receipt which indicated that the filing date of the Application was changed to December 15, 2003, replacing the correct filing date of September 4, 2003 that was originally accorded to the Application and as noted above, was also correctly noted in the Notice.

35 U.S.C. 113 (first sentence) as well as 37 CFR 1.81 and MPEP 608.02 require drawings "where necessary for the understanding of the subject matter sought to be patented."

The invention is entitled Method of Producing Nanosized Oxide Powders and relates to a method of forming metal oxide powders. Claim 1 which is the only independent claim recites the following:

1. A method of forming metal oxide powders, comprising the steps of:  
solid state mixing of at least one metal nitrate salt and at least one reducing organic acid,  
and  
heating said metal nitrate salt and said reducing organic acid, wherein a metal oxide powder is formed.

The 10 sheets of drawings comprising Figures 1(a) to 5(b) are all data (e.g. XRD, SEM) showing the structure of the metal oxide powder formed using the claimed method. The structure of the powder is clearly not "necessary for the understanding of the subject matter to be patented," since the subject matter to be claimed is a Method of Producing Nanosized Oxide Powders. The claimed subject matter is thus independent of the structure of the metal oxide powder.

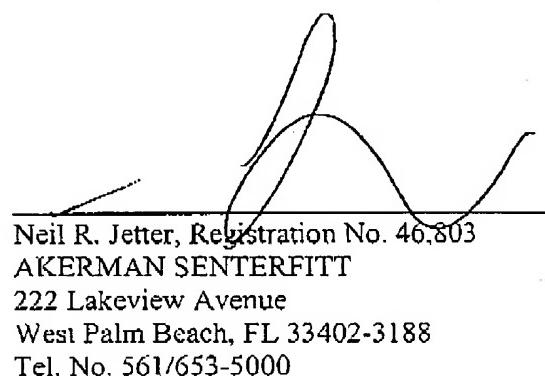
Therefore, the drawings are clearly not necessary for the understanding of the subject matter to be patented. Accordingly, Applicants respectfully request the filing date of September 4, 2003 be re-accorded to the Application.

{WP193687;1}

Applicants invite the Examiner to call the undersigned (direct line (561) 671-3662) if it is believed that a telephonic interview would expedite issuance of a favorable finding to the instant Petition.

Date: August 13, 2004

Docket No. 5853-461



(WP193687:1)